

In the Matter of Merchant Mariner's Document No. Z-55268
Issued to: MARTIN OLSEN

DECISION AND FINAL ORDER OF THE COMMANDANT
UNITED STATES COAST GUARD

651

MARTIN OLSEN

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations Sec. 137.11-1.

On 15 December, 1952, an Examiner of the United States Coast Guard at Portland, Oregon, suspended Merchant Mariner's Document No. Z-55268 issued to Martin Olsen upon finding him guilty of physical incompetence based upon a specification alleging in substance that while serving as an able seaman on board the American SS PAUL REVERE under authority of the document above described, on or about 15 November, 1952, while said vessel was enroute from New York City to Portland, Oregon, he suffered a swelling in his right leg which was diagnosed as phlebitis by an examining U.S.P.H.S. doctor who thereupon concluded that the person charged was unfit for sea duty.

At the hearing, Appellant was given a full explanation of the nature of the proceedings, the rights to which he was entitled and the possible results of the hearing. Appellant was represented by an attorney of his own selection. After counsel's motion to dismiss was denied by the Examiner, Appellant entered a plea of "not guilty" to the charge and specification proffered against him.

Thereupon, the Investigating Officer made his opening statement and introduced in evidence a certified copy of an entry in the Official Log Book of the PAUL REVERE which states that Appellant was paid off on 12 December, 1952, as a result of a certification by a U.S.P.H.S. physician that Appellant was unfit for sea duty due to recurrent phlebitis.

It was then stipulated by the parties that the U.S.P.H.S. physician's certificate was issued on or about 11 December, 1952, following an examination of Appellant; that the certificate stated Appellant was suffering from phlebitis for which he should take treatment for a 90 day period; and that, according to the certificate, Appellant was unfit for sea duty at the time it was issued. The Investigating Officer then rested his case.

In defense, Appellant offered in evidence his own sworn testimony. He stated that he intended to obtain treatment for his condition and would not go to sea during this time; but that he would like to seek employment on harbor and waterfront jobs.

At the conclusion of the hearing, having heard the arguments of the Investigating Officer and Appellant's counsel and given both parties an opportunity to submit proposed findings and conclusions, the Examiner announced his findings and concluded that the charge had been proved by proof of the specification. He then entered the order suspending Appellant's Merchant Mariner's Document No. Z-55268, and all other licenses, certificates of service and documents issued to this Appellant by the United States Coast Guard or its predecessor authority, until Appellant produces a certificate from the U.S.P.H.S., or other competent medical authority, attesting to his fitness for sea duty.

From that order, this appeal has been taken, and it is urged that:

POINT I. The hearing is void, ab initio, for want of

jurisdiction since the regulations state that a prerequisite to a hearing is an investigation related to a "marine casualty or accident" (46 C.F.R. 136.01, 136.03, 137.01, 137.05); and there was no marine casualty or accident involved in this case.

POINT II. The Examiner erred in suspending Appellant's

document prior to exhaustion of the appeal processes. In re Dimitratos et al., 91 F.Supp. 426, provides that there shall be no suspension prior to final

determination.

POINT III. The Examiner erred in failing to order the examining

physician to give testimony relative to Appellant's physical examination. This would have permitted inquiry as to the seriousness of the alleged physical infirmity and as to whether such alleged disability would prevent Appellant from adequately

performing his duties under different ratings.

APPEARANCES: Herman E. Cooper, Esquire, of New York City by
Lawrence P. Ashley, Esquire, of Counsel.

Based upon my examination of the record submitted, I hereby make the following

FINDINGS OF FACT

From 1 November until 12 December, 1952, inclusive, Appellant was serving as an able seaman on board the American SS PAUL REVERE and acting under authority of his Merchant Mariner's Document No. Z-55268.

While the ship was enroute from New York City to Portland, Oregon, during the above period of time, Appellant commenced suffering from a condition in his right leg which was later diagnosed as phlebitis by Dr. Craig, the Officer-in-Charge of the U.S.P.H.S. out-patient office at Portland, Oregon. Dr. Craig issued a certificate on or about 11 December, 1952, which stated, in essence, that Appellant's physical disability was caused by phlebitis which rendered him unfit for sea duty; and that this condition should be treated for a period of 90 days.

As a result of the issuance of this certificate, Appellant was signed off the articles of the PAUL REVERE and paid in full on 12 December, 1952. He was later furnished first class transportation to New York City. Prior to the hearing, the Investigating Officer explained to Appellant that he could voluntarily surrender his document until certified as fit for sea duty but Appellant refused to do so.

Appellant had been treated previously for this condition at the Baltimore and Staten Island Public Health Service Hospitals.

He is 64 years of age and eligible for a pension at age 65.

OPINION

There is no question concerning the jurisdiction as contended by Appellant in Point I. Title 46 C.F.R. 137.01-5 states that suspension or revocation proceedings shall be based upon investigations made under 46 C.F.R. 136 "or otherwise." The significance of the latter two words, which appear in 46 C.F.R. 137.01-5, is apparent from the wording of 46 U.S.C. 239(d) which

specifically provides for acts which are "not committed in connection with any marine casualty or accident."

Concerning Point II, the District Court case which is cited by Appellant refers specifically to a situation where the seaman's documents were retained by the Examiner prior to the time when he rendered his decision. Therefore, the case has no application to this one, since here the Examiner announced a decision which, in the absence of an appeal, was "final and binding on the person charged for all purposes." See 46 C.F.R. 137.09-75(e).

Appellant also claims, in Point III, that the Examiner on his own motion should have required Dr. Craig to testify. But the evidence shows that the recurrence of this ailment took place on the voyage to Portland, Appellant was examined at Portland, and thereafter removed from the ship. The only logical inference is that the Master did not consider Appellant fit for sea duty because he was not able to properly perform his duties and confirmation of this conviction was obtained from Dr. Craig. Appellant did not deny that he had phlebitis; he even stated that he had been treated for it on previous occasions and that he would not attempt to go to sea while undergoing treatment for this condition. Presumably, then, he was not fit for sea duty, at the time of the hearing, on the basis of his own testimony. Furthermore, Appellant was represented at the hearing by an attorney and ample opportunity was afforded him to summon witnesses or present other evidence. Nevertheless, he entered into a stipulation with the Investigating Officer, as to Dr. Craig's diagnosis, before the Investigating Officer had rested his case. Therefore, the proof of the charge of physical incompetence was based upon the admitted fact that Appellant was suffering from phlebitis rather than upon the physician's conclusion that Appellant was unfit for sea duty; and that part of the specification, which states Dr. Craig's conclusion, is surplusage.

Since one of the purposes of these remedial proceedings is to protect other seamen against the dangers arising from sailing with temporarily, as well as permanently, incompetent shipmates, Appellant must suffer some hardship until such time as he may again be fit for sea duty.

Although Appellant may have complied with the condition of the Examiner's order and thereby terminated the suspension prior to the effective date of the below order, this decision shall be effective for the purpose of discussing the points raised on appeal and in order to determine the status of the Examiner's order insofar as it affects Appellant's record.

ORDER

The Order of the Examiner dated at Portland, Oregon, on 15 December, 1952 AFFIRMED.

Merlin O'Neill
Vice Admiral, United States Coast Guard
Commandant

Dated at Washington, D. C., this 30th day of March, 1953.

